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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**JOHN FRANCIS BARNIEA, PT
4150 George Avenue #3
San Mateo, CA 94403
License No. AT 2977**

Respondent,

**CASE NOS. 1D 2003 63611,
1D 2004 64881**

ACCUSATION

The Complainant alleges:

PARTIES

1. Complainant, Steven K. Hartzell, is the Executive Officer of the Physical Therapy Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about July 19, 1993, the Board issued Physical Therapy License No. AT 2977 to John Francis Barniea, PT ("respondent") and at all times relevant herein, this license has been in full force and effect. The license expired on May 31, 2004 and has not yet been renewed. Respondent has no prior history of disciplinary action against her license.

JURISDICTION

3. This accusation is brought before the Board under the authority of the

1 following sections of the California Business and Professions Code (hereinafter “Code”):

2 A. Section 118 (b) of the Code provides, in relevant part, that the suspension,
3 expiration, or forfeiture by operation of law of a license issued by a board in the department, or
4 its suspension, forfeiture, or cancellation by the order of the board or by order of a court of law or
5 its surrender without the written consent of the board, shall not, during any period in which it
6 may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or
7 continue a disciplinary proceeding against the licensee upon any ground provided by law or to
8 enter an order suspending or revoking the license or otherwise taking disciplinary action against
9 the licensee on any such ground.

10 B. Section 2660 of the Code provides, in pertinent part, that the Board may
11 suspend, revoke or impose probationary conditions upon any license for the following causes:

12 (d) Conviction of a crime which substantially relates to the qualifications,
13 functions, or duties of a physical therapist. The record of conviction or a certified copy thereof
14 shall be conclusive evidence of that conviction.

15 (i)Violating or attempting to violate directly or indirectly,.... any provision or
16 term of this chapter or of the *State Medical Practice Act*. {emphasis added)

17 (l) The commission of any fraudulent, dishonest, or corrupt act which is
18 substantially related to the qualifications, functions, or duties of a physical therapist.

19 C. Section 2661 of the Code provides, in pertinent part, that “a plea of verdict of
20 guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any
21 offense which substantially relates to the qualifications, functions or duties of a physical therapist
22 is deemed to be a conviction within the meaning of this article. The board may order the license
23 suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or
24 the judgment of conviction has been affirmed on appeal or when an order granting probation is
25 made suspending the imposition of sentence, irrespective of a subsequent order under Section
26 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a
27 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
28 or indictment.”

1 D. Section 2239 (a) provides, in relevant part, that the use or prescribing for
2 or administering to himself of any controlled substance; or the use of any of the dangerous drugs
3 specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be
4 dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that
5 such use impairs the ability of the licensees to practice medicine safely constitutes unprofessional
6 conduct.

7 E. Section 2238 of the Code provides that a violation of any federal statute or
8 federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or
9 controlled substances constitutes unprofessional conduct.

10 **COSTS**

11 4. Section 2661.5 of the Code provides, in part, that the Board may request the
12 administrative law judge to direct any licensee found to have committed unprofessional conduct
13 to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of
14 the case.

15 **DRUGS**

16 5. Cocaine is a Schedule I controlled substance under section 11054(f) of the
17 Health and Safety Code.

18 **FIRST CAUSE FOR DISCIPLINARY ACTION**

19 **(Dishonest and Corrupt Acts)**

20 6. On or about April 27, 2004, a complaint was filed in ***People of the State of***
21 ***California v. John Francis Barniea***, Case no. 02160997, San Francisco Superior Court. The
22 complaint charged respondent with the following: Count 1 charged respondent with a violation
23 of Penal Code section 212.5(c), robbery, in the second degree, of U.S. currency by means of
24 force and fear, a serious felony. Count 2 charged respondent with violating Penal Code section
25 459 in that respondent unlawfully entered the United Commercial Bank in San Francisco with
26 intent to commit larceny and a felony. The criminal complaint further alleged that the above
27 crimes were committed while respondent was released from custody, on bail, and on his
28 recognizance within the meaning of Penal Code Section 12022.1 pending resolution of another

1 criminal case entitled *People of the State of California v. John Francis Barniea*. San Mateo
2 Superior Court, Case No.SC054820A. In that case, on October 15, 2003, respondent was
3 charged with drunk driving on August 24, 2003 under Vehicle Code section 23153 (A).

4 7. The above criminal charges are presently pending against respondent. On May
5 25, 2004, complainant, by and through the office of the Attorney General, requested and obtained
6 from San Francisco Superior Court Judge Charles F. Haines an order under Penal Code Section
7 23 prohibiting respondent from practicing physical therapy as a condition of bail while the
8 robbery charges are pending,

9 8. Respondent's conduct as alleged above constitutes dishonest, corrupt and/or
10 fraudulent acts that are substantially related to the duties, functions, and qualifications of a
11 physical therapist pursuant to Section 2660 (l). Therefore, cause for discipline exists.

12 **SECOND CAUSE FOR DISCIPLINARY ACTION**

13 **(Unlawful Use of Cocaine, Violation of Drug Statutes)**

14 9. The allegations of paragraphs 6 through 8, inclusive, are incorporated herein as
15 if fully set forth.

16 10. In *People of the State of California v. John Francis Barniea*, respondent was
17 initially charged with felony drunk driving, however, those charges were reduced to a
18 misdemeanor on May 5, 2004. On August 26, 2003, respondent was released from custody in
19 this matter on his own recognizance on a supervised release wherein, among other requirements,
20 he agreed to sustain from alcohol and/or other controlled substances. On or about January 14,
21 2004, a bench warrant was issued by San Mateo Superior Court Judge Craig L. Parsons revoking
22 and terminating respondent's supervised release and directing that a bench warrant be issued.
23 Respondent violated the terms of his supervised release when, on or about January 5, 2004, he
24 was hospitalized for a cocaine overdose and admitted using cocaine on January 5, 2004.
25 Respondent also tested positive for cocaine on January 12, 2004.

26 11. Respondent's illegal and excessive use of cocaine as set forth above
27 constitutes a danger to himself, the public, and potential patients, to the extent that his use
28 impairs his ability to practice physical therapy with safety. Respondent's unlawful use of cocaine

1 also constitutes a violation of state drug statutes and regulations pursuant to section 2238.

2 **PRAYER**

3 **WHEREFORE**, the complaint request that a hearing be held on the matters
4 herein alleged, and that following the hearing the Board issue a decision:

5 1. Revoking or suspending License Number AT 2977 issued to respondent John
6 Francis Barniea;

7 2. Ordering respondent to pay the Board the reasonable costs of the investigation
8 and enforcement of this case;

9 3. Ordering respondent to pay any and all costs associated with probation
10 monitoring should respondent be placed on probation; and,

11 4. Taking such other and further action as the Board deems necessary and proper.

12 DATED: 06/17/2004

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15 Original Signed By:
16 STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California

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